VOO SYUN MUI

v.

YAP MOOI MOOI

FEDERAL COURT, KUALA LUMPUR
SALLEH ABAS ACTING LP
ABDUL HAMID OMAR FJ
SYED AGIL BARAKBAH FJ
[CIVIL APPEAL NO. 322 OF 1982]
28 FEBRUARY 1984

CONTRACT: *Option to purchase land - Option subject to agreement to be signed - Whether agreement of sale definite and complete - Whether option exercised.*

The appellant gave an option to the respondent to purchase her land together with a bungalow erected thereon at a price of RM270,000. The option was valid for two weeks, but before the period was up, the appellant told the respondent that she was not willing to sell the house. The respondent had a letter exercising the option prepared and handed it to one Teo Teo Sen at the appellant's house in Melaka in a sealed envelope together with a cheque for RM27,000. The letter and cheque were returned to the respondent. The reason given was that they could not be delivered to the appellant. The respondent sued the appellant.

Held:

[1] It was clear from the evidence and the conduct of the parties that their intention was to come to a definite and complete agreement on the subject of the sale. The mere fact that the option was subject to an agreement to be signed did not necessarily mean that there was no legal binding and enforceable agreement.

[2] The respondent had exercised the option by tendering the deposit within the period stipulated in the option.

[Appeal dismissed.]

Case referred to:

Lim Keng Siong & Anor. v. Yeo Ah Tee [1983] 2 MLJ 39; [1983] CLJ (Rep) 231

For the appellant - Tuan Haji Abdul Kariem Bashir; M/s. Bashir & Co.
For the respondent - Abdul Ghani Abdullah; M/s. Syarikat Choong Yik Son

JUDGMENT

Abdul Hamid Omar FJ:

The appeal is against the decision of Wan Hamzah J given at the High Court, Kuala Lumpur on 15 December 1982 giving judgment for the plaintiff/respondent.

The facts briefly are that on 8 August 1980, the appellant/defendant, a housewife residing at 7th ms. Telok Mas, Melaka, gave an option to the respondent/plaintiff to purchase her land held under H.S. (M) No. 246 for P.T. No. 35419 in the Mukim of Kuala Lumpur together with a bungalow erected thereon and known as Lot No. 39 Bukit Seputeh, Jalan Klang, Kuala Lumpur at a price of RM270,000. The option was valid for two weeks from 8 August 1980 and the last date to exercise the option was on 22 August 1980. A sum of RM300 was paid

as consideration for the option to purchase. To exercise the option the respondent was to pay a deposit of 10% of the sale price and the balance was to be paid within one month from the date the deposit was paid.

The option letter was prepared by Miss Pang a solicitor at the Melaka Office in whose presence the appellant signed the option, gave it to the respondent and received a sum of RM300. The appellant had agreed to come to Kuala Lumpur within a few days to sign the sale and purchase agreement and on that date the 10% deposit would be paid. The respondent waited for the appellant for four or five days but she did not turn up. She (the respondent) then went to Melaka and was told by the appellant that she had been busy and could not therefore be in Kuala Lumpur. On that day the appellant again promised that she would go to Kuala Lumpur in a few days' time. She failed to turn up.

On 12 August 1980 the respondent went to the appellant's house in Melaka and there the appellant told the respondent that she was not willing to sell the house and instead was prepared to pay compensation. The respondent instructed her solicitor Mr. Choong Yik Son to prepare a letter exercising the option (P3). On the following morning the respondent, her son, her brother and her brother's wife went to the appellant's house in Melaka. They could not meet the appellant although they were told by one Teo Teo Sen that she had been with the appellant a few minutes before they arrived. As the respondent was not able to see the appellant, she handed the letter in a sealed envelope containing a cheque for RM27,000 and the letter exercising the option to Teo Teo Sen to be handed to the defendant. According to the respondent the appellant's car was at the house then. The same morning the respondent went to the office of Miss Pang in Melaka and the appellant's husband also arrived there. The respondent told the appellant's husband that she had handed the letter and the cheque to Teo Teo Sen. The appellant's husband said nothing. On 25 August 1980, the respondent's solicitor received a letter (P15) purportedly sent by Teo Teo Sen together with the envelope containing the letter exercising the option and the cheque. The reason given was that the letter could not be delivered to the appellant.

The learned Judge in his very careful judgment came to the conclusion that it was not Teo Teo Sen but the appellant herself who returned the cheque and the letter exercising the option. He drew an inference from the various facts disclosed during the course of the hearing. In the learned Judge's view this finding was strengthened by the fact that the appellant's husband knew that the respondent had left the letter exercising the option and the cheque with Teo Teo Sen. The learned Judge commented adversely against the appellant for her failure to call her husband as a witness to refute the respondent's allegation.

It is to be observed that the appellant did not deny the respondent's claim that an option was made and she also did not deny the respondent's allegation as contained in para. 3 of the statement of claim to the effect that she (the appellant) "issued to the respondent a valid and enforceable option on 8 August 1980 for two weeks from the date thereof to purchase the said property free from all encumbrances for a purchase consideration of RM270,000" In the appellant's amended statement of defence in paras. 3 and 4 she averred as follows:

> 3. The defendant admits having given to the plaintiff an option to purchase the said property as alleged in para. 3 of the Statement of Claim. The said option was valid for two weeks from the 8th August 1980 and was subject to contract being signed.
>
> 3a. The defendant contends and will contend that since the option was subject to contract being signed and no contract was ever signed, there was no concluded contract between plaintiff and the defendant.

4. The defendant has no knowledge of the allegations contained in paragraph 5 of the Statement of Claim.

Substantially the appeal revolves round a question of fact. In this regard we see no reason to differ from the finding of the learned Judge that the respondent did exercise the option by tendering the 10% deposit, a sum of RM27,000 within the two week period stipulated in the option but was rejected by the appellant. In our view it is quite apparent that there was a change of heart on the part of the appellant and she had decided to repudiate the agreement. This is evident by the fact that she omitted to turn up in Kuala Lumpur as promised on two occasions. More importantly she had not challenged the respondent's allegation that she had told the respondent that she was no longer willing to sell the property. The appellant's husband was fully in the picture and in fact he had full knowledge of the fact that the respondent had properly exercised her option. This explained the reason for the return of the letter exercising the option and the cheque to the respondent.

The only question of law raised by the appellant in her defence is to be found in paras 3 and 4 of the amended defence (*supra*). In this respect the learned Judge made a finding as follows:

> But the defendant has failed to show that there were matters which remained to be discussed between her and the plaintiff and which had to be embodied in a formal sale and purchase agreement.

In the circumstances of this case we see no merit in the appellant's contention. In our view the evidence and exhibits in this case and also the conduct of the appellant clearly show that it was the intention of the parties to come to a definite and complete agreement on the subject of the sale. What remained to be done was for the respondent to exercise the option in accordance with the terms stated in the option. The mere fact that it was subject to an agreement to be signed did not necessarily mean there was no legal binding and enforceable agreement. (See *Lim Keng Siong & Anor. v. Yeo Ah Tee* [1983] CLJ (Rep) 231.

In our judgment the learned Judge had not erred at all in law or in fact in arriving at the decision that he did. For this reason therefore we would dismiss this appeal with costs.

Also found at [1984] 2 CLJ 167

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